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EXAMINER				
RANKINS, WILLIAM E				
ART UNIT		PAPER NUMBER		
3684				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patents@chadbourne.com

# Office Action Summary

**Application No.**

10/801,238

**Applicant(s)**

LAWRENCE, DAVID

**Examiner**

WILLIAM RANKINS

**Art Unit**

3684

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-12 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-12 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1, 3-12 and 20 are pending in this application. Claims 3-5 and 7-10 have been amended and claim 20 is new.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 11/15/2010 was filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Response to Arguments***

#### **Response to Double Patenting Rejection**

Applicant's arguments filed 11/15/2010 have been fully considered but they are not persuasive. A terminal disclaimer is required to overcome the rejection.

#### **Response to Claim Rejections - 35 USC § 103**

*A Board of Patent Appeals and Interferences decision in an application has res judicata effect and is the "law of the case" and is thus controlling in that application and any subsequent, related application. Therefore, a submission containing arguments without either an amendment of the rejected claims or the submission of a showing of facts will not be effective to remove such rejection. See MPEP 706.03(w) and 1214.01.*

Consequently, all 103 rejections are maintained however, a response to applicants' arguments is provided below. Additionally, new claim 20 is presented but appears to be comprised of limitations similar in scope to claim 1.

1. Applicant's arguments filed 01/14/2008 have been fully considered but they are not persuasive.

a. The applicant argues the following:

i. Motivation to combine not present in the prior art:

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, In the present case the TSM is found in the knowledge of one of ordinary skill in the art.

ii. Number of references:

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

iii. Improper hindsight:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

iv. Examiner has not presented a prima facie case of obviousness because the examiner failed to consider every limitation, mischaracterized the claim limitations and over-generalized the references:

In response to applicant's argument above the examiner asserts that the applicant fails to point out which claim limitations were not considered, in what way the claim limitations were mischaracterized and in what way the references have been over-generalized. Therefore the applicant's argument is unpersuasive.

The examiner asserts that the applicant has failed to traverse the examiner's Official Notice and that the noticed fact is now considered applicant admitted prior art.

Examiner took Official Notice in claim(s) 9.

Here, per MPEP 2144.03, Official Notice is used to establish "facts" without supporting documentary evidence. In particular, said facts should (a) "serve only to 'fill in the gaps' which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection" and (b) should not be "the principal evidence upon which a rejection was based". [see MPEP 2144.03A]. Further, "[i]f such notice is taken, the basis for such reasoning must be set forth explicitly" so that Applicant can "adequately traverse the rejection in the next reply after the Office action in which the common knowledge statement was made" [MPEP 2144.03B]. In this vein, "[t]o adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include **stating why the noticed fact is not considered to be common knowledge or well-known in the art.** [see MPEP 2144.03C & 37 CFR 1.111(b), emphasis added]. Here, only "[i]f applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. [see *Id.* & 37 CFR 1.104(c)(2)]. "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate." [MPEP 2144.03C].

### ***Double Patenting***

1. Claims 1-12 were rejected for double patenting in the previous office action. The applicant has pointed out that the statement of statutory basis was directed toward a statutory double patenting rejection under 35. U.S.C. 101 while the actual double patenting rejection was directed toward a provisional non-statutory obviousness-type double patenting rejection. The examiner asserts that the statement of statutory basis was intended to encompass a provisional non-statutory obviousness-type double patenting rejection. The statement of statutory basis follows below.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 and 3-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/730,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because although claim 1 of the present application has been amended to include the limitations of claim 2 and the additional limitation of the identification of bidders in the information descriptive. The examiner finds that the support for the inclusion of this limitation is in the specification of both the present and copending application and thus does not serve to render claim 1 of the present application patentably distinct from claims 1 and 2 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647).

As per claim 1;

Maltzman discloses:

A computer implemented method for offering an option to sell and buy items, the method comprising:

offering in a computer system, items to one or more pre-auction bidders at a pre-auction price (paragraph 0018);

receiving into a memory in the computer system, an indication from the one or more pre-auction bidders accepting the offer at the pre-auction price (paragraph 0032, figs. 1, 5a and 5b);

publishing in the computer system, information descriptive of one or more pre-auction sales including the pre-auction price (paragraph 0029, fig.1, server 20 and fig. 4 block 660);

accepting into the memory in the computer system, the offer at the pre-auction price (paragraph 0034, figs. 5B block 330 and 340.

Maltzman does not disclose:

allocating shares of stock comprising an initial public offering.

However, Moshal et al. discloses:

An initial public offering using a Dutch auction (paragraph 0096).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman and Moshal et al. to offer a system for a plurality of exchanges (Moshal et al., Para. 0006-0009) thereby increasing the marketability of the system to appeal to more users by offering a broader array of products.

Maltzman also does not disclose:

Said information descriptive of the pre-auction sales of shares including the identification of bidders who bought shares at the pre-auction price;

However, Sloan et al. discloses:

Item market data which includes identification of sellers and/or purchasers/bidders on a particular item (Para. 0031).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Maltzman, Moshal et al. and Sloan et

al. One of ordinary skill in the art at the time of this invention would have been motivated to do so in order to do so in order to identify buyers who may have purchased items at below market value and may be willing to resell items at an appropriate profit (Sloan et al. Para. 003).

Maltzman also does not disclose:

Auctioning the remaining shares.

However, Sheehan et al. discloses:

Internet based auctions comprising pre-auctions where remaining merchandise is offered in a public auction (paragraph 0009).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal et al., Sloan et al. and Sheehan et al.

One of ordinary skill in the art would be motivated to do so in order to allow preferred trading partners a first opportunity at the offering before the public sale.

As per claim 5;

Maltzman does not disclose:

The method of claim 1 further comprising determining with the processor in the computer system, pre-auction bidders based upon at least one of:

investor suitability, investment objectives and prior investment history.

However, Sheehan et al. Discloses:

Allowing frequent buyers and sellers to pre-register and pre-qualify one another so that goods and services can find a quick and ready market (Para. 0009) and issuing invitations to likely buyers to allow access to first round and pre-auction activities (paragraph 0016).

The examiner asserts that the "investor suitability", which is not further defined in the specification, is similar in scope to the determination of a "likely buyer". In addition, the applicants specification (Para. 0034) discloses, pre-qualification as determining investor suitability...or other type of determination that would be indicative of whether a bidder should be able to participate in the IPO. Regardless of the particular terminology used the spirit of the applicant's invention and the reference with regard to this limitation are the same.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal et al., Sloan et al., and Sheehan et al.

One of ordinary skill in the art would be motivated to do so in order to find a quick and ready market for goods and services (Sheehan et al. Para. 0009).

Claim 20 is substantially similar to claim 1 and is therefore rejected under the same rationale.

2. Claims 3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647) as applied to claim 1 and further in view of Buist et al. (2002/0035534).

As per claim 3;

Maltzman does not disclose:

The method of claim 1 further comprising publishing via the computer system, the number of shares offered at the pre-auction price.

However, Sheehan discloses:

A pre-auction over the Internet (paragraph 0009).

Additionally, Buist et al discloses:

Posting on the Internet, auction information including the number of share offered and the auction price (Fig. 15 A, bullets 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan et al. and Buist et al.

One of ordinary skill in the art would be motivated to do so in order to find a quick and ready market for goods and services (Sheehan et al. Para. 0009).

As per claim 10;

Maltzman does not disclose:

The method of claim 1 wherein auctioning comprises the steps of:  
receiving into the memory in the computer system, one or more bids comprising a price per share and a number of shares;  
and allocating with the processor in the computer system, shares according to a highest price per share bid for a corresponding number of shares until all shares comprising the initial public offering have been allocated.

However, Buist et al. discloses:

An order book display for an auction showing bids comprising price per share and number of shares (paragraph 0070 and fig. 11).

Buist also discloses:

An allocation method (Fig. 15A, paragraph 8) where share allocation is based on the highest price per bid and an auction close method (Fig. 15 a, paragraph 13) where the auction will close when the issuer has received bids for a number of shares equal to or greater than the offering size.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan and Buist et al.

One of ordinary skill in the art would be motivated to do so in order to facilitate the sale of all shares at the highest possible price for the seller.

As per claim 11;

Maltzman does not disclose:

The method of claim 10 wherein if more than one bid is received comprising the same price per share, shares are allocated for that price on a first bid received, first shares allocated basis.

However Buist et al. discloses:

A pricing and allocation method (Fig. 15 A, Paragraph 8) where bids at the same price per share are allocated shares based upon the first bid received.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Maltzman, Moshal, Sloan and Buist et al.

One of ordinary skill in the art would be motivated to do so in order to provide a fair and impartial bidding method to all potential bidders.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647) as applied to claim 1 and further in view of Buist et al. (2002/0035534) and Ausubel et al. (2004/00554551).

As per claim 4:

Maltzman does not disclose:

The method of claim 1 further comprising publishing via the computer system, how many shares each pre-auction bidder received.

However, Sheehan et al discloses:

A pre-auction over the Internet (paragraph 0009).

Additionally, Ausubel et al. discloses:

A message sent via computer including the allocation of items among bidders and the payment of the bidders (paragraph 0133).

Finally, Buist et al. discloses:

A method and apparatus for auctioning securities (title).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan et al., Ausubel et al. and Buist et al.

One of ordinary skill in the art would have been motivated to do so in order to summarize and display the final outcome of the auction to the network (Ausubel Para. 0133).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647) as applied to claim 1 and further in view of Agarwal et al. (2002/0099646).

As per claim 6;

Maltzman does not disclose:

The method of claim 1 wherein the pre-auction price is determined by an issuer of the stock and an underwriter for the stock.



However, Sheehan et al discloses:

A pre-auction over the Internet (paragraph 0009).

Additionally, Agarwal et al. discloses:

Syndication functions that allow underwriters/dealers (issuers) to determine demand for an issue of securities and set a price (Para. 0094).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan et al. and Agarwal et al.

One of ordinary skill in the art would be motivated to do so in order to cooperatively and without bias determine the demand for the stock (Para. 0094).

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647) as applied to claim 1 and further in view of Hoffman et al. (20020049664) and Agarwal (2002/0099646).

As per claim 7;

Maltzman does not disclose:

The method of claim 1 further comprising making available via the computer system, a list of those pre-auction bidders that have previously purchased pre-auction shares comprising an offering underwritten by an investment bank involved in the initial public offering.

However, Sheehan et al. discloses:

Pre-auction trading (paragraph 0009).

Additionally, Hoffman et al. discloses:

A bidder list, compiled in a system, from auction bid history (paragraph 0069, 0072).

Agarwal discloses that a new issue may be handled by a dealer or group of dealers that underwrite an issue.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan, Hoffman and Agarwal.

One of ordinary skill in the art would be motivated to combine the system of Maltzman with Sheehan to offer pre-auction trading and then add the bidder list of Hoffman in order to provide sufficient notice to bidders that may be interested in the offering as evidenced by the bidders' previous activity. One of ordinary skill in the art would also have been motivated to include the method of Agarwal in the combination by having the issues underwritten in order to get a feel for the level of interest in the issue from investors (Para. 0111).

As per claim 8;

Maltzman does not disclose:

The method of claim 7 further comprising making available via the computer system, information descriptive of an investment experience related to the previously

purchased pre-auction shares comprising the pre-auction price of the previously purchased pre-auction shares.

However, Hoffman et al. discloses:

A bidder list, compiled in a system from auction bid history, with registered bidders comprehensive contact information in their user profiles (Para. 0069).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan, Hoffman et al. and Agarwal.

One of ordinary skill in the art would be motivated to do so in order to maintain and access sufficient information about potential bidders to enable sellers to contact the bidders most likely to buy.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzman (2002/0107779) in view of Moshal et al. (2001/0042041), Sloan et al. (2005/0091140) and Sheehan et al. (2001/0049647) as applied to claim 1 and further in view of Hoffman et al. (20020049664) and Official Notice.

As per claim 9;

Maltzman discloses:

The method of claim 1 further comprising:

Setting in the memory in the computer system, a reserve (Para's. 0021 and 0028) for the initial public offering

Maltzman does not disclose:

The reserve price being for an initial public offering;

determining with the processor in the computer system, a total amount to be received from accepted pre-auction offers and auction bids;

and conditioning with the processor in the computer system, sale of the shares comprising the initial public offering, upon the total amount equaling or exceeding the reserve price.

However, Moshal et al. discloses:

An initial public offering using a Dutch auction (paragraph 0096) and an auction system where the reserve price has been set and settlement is conditioned upon a sufficient number of buyers bidding at or above the reserve price to sell all items in the auction (Para, 0152).

Additionally, the examiner takes Official Notice that it is old and well known in the art to use a computer system or to calculate by hand, the expected amount to be received from pre-auction and auction bids and to use the computer system, or calculate by hand, whether or not the reserve price has been met and to decide whether or not to issue the IPO as a result e.g. when the Dot com bubble burst, any IPO which expected to raise a particular sum of money but did not may have been subject to cancellation. The examiner points to the Benveniste et al. reference which discloses two methods of IPO sales, the fixed price and the book building method. In

the latter method the underwriter solicits orders during road shows that help set the final offer price (Pg. 2, Para. 3) and the expected proceeds are higher (Pg. 2, Para. 2, Pg. 6, Para. 3, Pg. 8, Para's. 3 and 4). In this way the expected proceeds are calculated.

The examiner also points to the Scott reference where due to lack of investor interest and indications of less than expected proceeds the IPO was cancelled (Pg. 4, Para's. 2 and 3)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman, Moshal, Sloan, Sheehan and examiner's Official Notice.

One of ordinary skill in the art would be motivated to do so in order to anticipate the prospect of a successful issue by determining the price at which an issue will sell and to automate the process.

7. Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maltzmann (2002/0107779) in view of Moshal et al. (2001/0042041), further in view of Sheehan et al. (2001/0049647), and further in view of Buist et al. (2002/0035534), and further in view of Eckert et al. (2002/0069161).

As per claim 12;

Maltzman does not disclose:

The method of claim 10 wherein if more than one bid is received comprising

the same price per share, shares are allocated for that price on a pro rata basis.

However, Eckert et al. discloses:

An auction system using the Vickrey method that allocates shares at the same price per share on a pro rata basis.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods and systems of Maltzman and Eckert et al.

One of ordinary skill in the art would be motivated to do so in order to determine applicable note distributions and a clearing price.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Rankins whose telephone number is 571-270-3465. The examiner can normally be reached on M-F 7:30 AM - 5:00 PM, off alt Fridays beg 6/15/07.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. E. R./

Examiner, Art Unit 3684  
12/01/2010

/Susanna M. Diaz/

Primary Examiner, Art Unit 3684

